UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/CN.9/SR.564
8 November 1995

ORIGINAL: ENGLISH

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Twenty-eighth session

SUMMARY RECORD (PARTIAL)* OF THE 564th MEETING

Held at the Vienna International Centre, Vienna,
on Friday, 12 May 1995, at 2 p.m.

Chairman: Mr. GOH (Singapore)

Chairman of the Committee of the Whole: Mr. GAUTHIER (Canada)

CONTENTS

Draft Convention on Independent Guarantees and Stand-by Letters of Credit (*continued*)

Report of the drafting group (*continued*)

Decision of the Commission and recommendation to the General Assembly

* No summary record was prepared for the rest of the meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of distribution of this document* to the Secretary of the Commission, room E0455, Vienna International Centre.

Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

V.95 59065 (E) (a:\1995\uncitral 1)

Distr.: 21 November 1995

The meeting was called to order at 2.10 p.m.

DRAFT CONVENTION ON INDEPENDENT GUARANTEES AND STAND-BY LETTERS OF CREDIT (*continued*) (A/CN.9/405, A/CN.9/408, A/CN.9/411)

Report of the drafting group (*continued*) (A/CN.9/XXVIII/CRP.2 and Add.1-5)

1. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) reminded the Commission that two points were outstanding on article 1: the idea of making a reference to "habitual residence" and the question of the conflict-of-law rule. There were two alternatives for the latter: paragraph (1 *bis*) as proposed by the drafting group (A/CN.9/XXVIII/CRP.2) and the article 23 suggested by the Secretariat at the end of the previous meeting. Both of them raised the issue whether the rule should refer to "international undertakings" or simply "undertakings". He invited the Commission to deal with the conflict rule first.

2. **Mr. PELICHET** (Observer for the Hague Conference on Private International Law) said that the conflict-of-law rule was intended to be a general rule operating independently of the Convention, and should therefore cover all situations in which a conflict of laws could arise in a State. Consequently, he urged the deletion of the word "international".

3. **Mr. FAYERS** (United Kingdom) agreed that the word "international" should be deleted.

4. **Mr. BONELL** (Italy) disagreed. His delegation understood that articles 21 and 22 applied to international undertakings precisely because they appeared in an instrument dealing with undertakings of that kind. The deletion of the word "international" from the conflict rule would create considerable problems, because the rule would then suggest that, under article 21, a purely internal guarantee could be subjected to the law of a foreign jurisdiction. With regard to the location of the conflict rule, which for the moment he would call "article X", his delegation wished it to be moved from article 1 to chapter VI, or a possible chapter VII. It should read as suggested by the Secretariat, but with the words "as referred to in article 2" replaced by the words "as defined in article 2 and article 4". In addition, in order to alert the reader to the situation from the start, the provision in article 1 (1) should begin with the following words: "Subject to article X, this Convention applies ...".

5. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) said he did not think there was any intention that the Convention should apply to domestic undertakings.

6. **Mr. EDWARDS** (Australia) said his delegation could accept the rule with or without the word "international". It would prefer the word to be retained, however, so as to dispel any idea that the Convention might apply to undertakings generally.

7. **Ms. FENG Aimin** (China) said that the term "undertaking" was new in the context of the subject and had been coined specifically for the purposes of the Convention. Consequently, she could not see that a problem would arise if the word "international" were omitted.

8. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) noted that there was no strong support for the deletion of the word. He took it that the Commission wished to retain it.

9. *It was so agreed.*

10. **Mr. PELICHET** (Observer for the Hague Conference on Private International Law), referring to the question of the location of the conflict rule, said that he had a strong preference for the suggestion that it should be placed in chapter VI. If it remained in article 1, there was a risk of misinterpretation. Moreover, the wording suggested by the Secretariat was simpler and partly disposed of the concern expressed by the German delegation at the previous meeting.

11. **Mr. BURMAN** (United States of America) endorsed the suggestion to move the conflict rule to chapter VI. He asked whether acceptance of that suggestion implied acceptance of the amending language proposed by Italy.

12. **Ms. CZERWENKA** (Germany) said that the scope of the conflict rule suggested by the Secretariat would not be clear without an express reference articles 4 and 6.

13. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) said that a possible solution might be to replace paragraph (1 *bis*) by a modified version of article 1 (3) of the Working Group's draft (A/CN.9/408), as follows: "The provisions of articles 21 and 22 apply to international undertakings as defined in article 2, independently of paragraph (1) of this article".

14. **Ms. CZERWENKA** (Germany) said that she could accept the Chairman's proposal but would suggest that the words "as defined in article 2" be replaced by "as defined in this Convention". That would broaden the reference to include the definition of internationality and would overcome the problem of deciding to which provisions reference should be made.

15. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) asked whether there was support for that suggestion.

16. **Mr. BURMAN** (United States of America) said that, since it had been decided earlier that the qualifying word "international" should be retained, it would be inappropriate to refer to article 2 only. Otherwise, it was a matter of drafting.

17. **Mr. HERRMANN** (Secretary of the Commission) said that the Commission had already approved the wording of article 1 (1), which included the phrase "an international undertaking referred to in article 2", to which no further qualification was added. It would not be the same to say "as defined in the Convention", since that brought in rights and obligations.

18. **Mr. BONELL** (Italy) said that he disagreed with that view. A reference limited to article 2 would leave in doubt not only the meaning of "international" but also other points related to what an undertaking was. The problems would be solved by the suggestion made by the German delegation.

19. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) said that the present task of the Commission was to ensure that its decisions had been implemented by the drafting group in its report and not to re-open discussions on matters already decided upon when article 1 had originally been discussed. He therefore suggested that the Commission should take up the question of habitual residence. He recalled that the drafting group had decided against including the term "habitual residence" in article 1 and he wished to propose that language be inserted in article 6 as follows: "'place of business' refers to habitual residence if the person in question does not have a place of business", on the understanding that the rule contained in article 4 (2) (b) would not be amended.

20. **Ms. CZERWENKA** (Germany) said it appeared that the discussion on the conflict-of-law question was to be regarded as closed. In her view, the matter had been one of drafting and not of substance. She regretted that the Commission had not been able to agree to clarify drafting issues. It would be more difficult for States to adhere to the Convention if they were uncertain as to the meaning of terms.

21. **Mr. FAYERS** (United Kingdom) said that he endorsed the remarks of the representative of Germany. Whenever points in doubt were raised by any delegation, it was necessary to attempt to clarify them.

22. **Mr. PELICHET** (Observer for the Hague Conference on Private International Law) said that the positioning and wording of the conflict-of-law rule was, in his opinion, not a drafting question but a substantive issue.

23. Turning to the proposal concerning habitual residence, he felt that the drafting group's approach of dealing with the matter in article 22 only was a good one. If it was dealt with in article 6, there would still be a need to refer to the term "habitual residence" in article 22, since article 22 would apply independently of the Convention in cases where the Convention was not applicable. Moreover, if it was stated in article 6 that "place of business" meant "habitual residence" where there was no place of business, that would affect the scope of application in article 1. Replacing "place of business" by "habitual residence" in article 1 (1) (a) would have the result of requiring the place of issuance to coincide with the habitual residence of the guarantor/issuer. That could not be the intention. It would be better to have the rare cases involving habitual residence dealt with only under the conflict rule in article 22.

24. **Mr. LAMBERTZ** (Observer for Sweden) said that, although he would have supported the German proposal for a reference to the whole Convention, he agreed that the discussion on that matter should now be closed. With regard to the term "habitual residence", he was in favour of including explanatory language in article 6, as the Chairman proposed. That would be preferable to having different definitions in article 1 and article 22.

25. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) said that his suggestion was to have a definition of "place of business" in article 6 and no reference to "habitual residence" in article 22.

26. **Mr. PELICHET** (Observer for the Hague Conference on Private International Law) asked how article 1 (1) (a) would then be interpreted, for example if a private person issued an undertaking at a place that was not his habitual residence. Clearly, if the Commission agreed to add the proposed rule in article 6, it would be necessary to reformulate article 1 (1) (a).

27. **Mr. HERRMANN** (Secretary of the Commission) wondered whether, if persons without a place of business were not to be covered by article 1 (1) (a), the intention was that they should be covered under article 1 (1) (b), under rules of private international law. The Chairman's proposal was to deal with the matter in a rule of interpretation in article 6. In cases such as that referred to by the observer for the Hague Conference on Private International Law, the assumption was that common sense would be relied on in the interpretation of the Convention.

28. **Mr. MARKUS** (Observer for Switzerland) said he was concerned that the inclusion of the proposed rule of interpretation in article 6 would have the effect of extending the scope of application of the Convention under article 1. He therefore had doubts about the proposed change in article 6. With regard to article 22, it would be best to be consistent and not include a reference to "habitual residence" there unless one was to be included in article 1 also.

29. **Mr. BURMAN** (United States of America) said that the easiest solution might be to delete the reference to "habitual residence" in article 22. Certainly there should be no reference to "habitual residence" in article 1. The point that the proposals attempted to cover was of minimal importance to the business world. Private persons need not be regulated by the Convention.

30. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) said that the solution of deleting the reference in article 22 was perhaps the best one. He would take it that the Commission wished to adopt the text of article 1 proposed by the drafting group, with paragraph (1 *bis*) replaced by a new paragraph (3) with the wording that he had read out, on the understanding that the reference to habitual residence would be deleted in article 22.

31. *It was so decided.*

Article 2, paragraph (1)

32. **Mr. SHISHIDO** (Japan) wondered whether the insertion of the words "subject to article 15" after "determinable amount" in the third and fourth lines might make it clearer that purely oral demands were not admissible.

33. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) said he believed that there was general agreement that the phrase "accompanied by other documents", appearing in the fourth line, adequately conveyed the idea that all demands had to be documentary in nature. He took it that the Commission wished to adopt the changes proposed by the drafting group.

34. *It was so decided.*

Article 3

35. *The proposed changes were adopted.*

Article 6

36. **Ms. CZERWENKA** (Germany) wondered why her delegation's proposal that subparagraph (f) be amended to read "'confirmer' means the person issuing the confirmation" had not been taken up by the drafting group.

37. **Mr. SAHAYDACHNY** (Secretariat) explained that the drafting group had felt that to use the word "issuing" raised a drafting problem in that it might bring in the notion of the issuance of the undertaking.

38. **Mr. FAYERS** (United Kingdom) suggested that the problem might be solved by using the word "adding" rather than "issuing" in the text proposed by Germany.

39. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) asked whether there was agreement that subparagraph (f) should read: "'confirmer' means the person adding a confirmation to an undertaking".

40. *It was so decided.*

41. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) said he took it that the Commission wished to adopt the text of article 6 proposed by the drafting group, as amended.

42. *It was so decided.*

Article 8

43. **Mr. SAHAYDACHNY** (Secretariat) said that the text proposed by the drafting group (A/CN.9/XXVIII/CRP.2/Add.1) attempted to implement the Commission's decision to eliminate the reference to an amendment consisting solely of an extension to the validity period of the undertaking, as had appeared in the earlier draft of paragraph (2) (A/CN.9/408, annex). A new paragraph (2 *bis*) had been created in order to make it clearer that the rule concerning the effective date of a previously authorized amendment and the rule concerning the effective date of other amendments were both subject to party autonomy.

44. **Ms. FENG Aimin** (China) said that her delegation still felt that article 8 would give rise to problems of interpretation in the banking world. Its provisions differed considerably from those of the Uniform Customs and Practice for Documentary Credits (UCP); for example, the UCP terms stipulated that the presentation of documents could also serve as a form of amendment. If no further changes were made to the article, she hoped that a reference to the issue would be included in the Commission's report.

45. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) said that he appreciated the point raised by the representative of China but took it that the Commission was generally satisfied with the text proposed by the drafting group and wished to adopt it.

46. *It was so decided.*

Article 9, paragraph (1)

47. *The proposed change was adopted.*

Article 10, paragraph (2)

48. *The proposed change was adopted.*

Article 11, paragraph (1) (A/CN.9/XXVIII/CRP.2/Add.2)

49. *The proposed changes were adopted.*

Article 12 (b)

50. **Mr. FAYERS** (United Kingdom) said that the words "is informed" had been proposed by the drafting group to replace "receives confirmation" because the latter phrase might present difficulties given that

(Mr. Fayers, United Kingdom)

"confirmation" was a defined term. He believed that a delegation was not in favour of the formulation "is informed", and he therefore wondered whether "receives a notice" would be a more acceptable alternative.

51. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) said that the phrase "receives a notice" might imply that two documents were involved.

52. **Mr. BONELL** (Italy) agreed that a notice could be understood as constituting a separate communication from the document presented.

53. **Mr. BURMAN** (United States of America) said that the word "informed" had an informal connotation in legal usage. Perhaps the expression "receives acknowledgement" would better convey the content of a business communication.

54. **Mr. EDWARDS** (Australia) suggested that the words "is advised" should be used.

55. *It was so decided.*

Article 12 (c)

56. **Mr. SAHAYDACHNY** (Secretariat) explained that the drafting group had inserted the phrase "and an expiry date has not been stated in addition" in order to reflect a proposal made by Germany, but had placed it inside square brackets since it was not felt to be strictly necessary.

57. **Mr. EDWARDS** (Australia) said that in his view the inserted phrase read awkwardly. Perhaps it would be helpful if the square brackets were replaced by round brackets.

58. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) said he did not think that brackets were needed. If he heard no objection, he would take it that the Commission wished to adopt the proposed text (A/CN.9/XXVIII/CRP.2/Add.3) subject to deletion of the square brackets.

59. *It was so decided.*

Article 13, paragraph (1)

60. *The proposed changes were adopted.*

Article 15

61. **Ms. CZERWENKA** (Germany) drew attention to the inconsistency between the reference in paragraph (3) to subparagraphs (i), (ii) and (iii) of article 19 (1) and the redrafted form of article 19 itself.

62. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) said that the Secretariat would amend the reference accordingly. He took it that the Commission wished to adopt the proposed text on that understanding.

63. *It was so decided.*

Article 16

64. **Mr. SAHAYDACHNY** (Secretariat) recalled that the drafting group had been asked to consider whether, in order to reinforce the notion of the documentary character of the demand, the word "other" should be inserted at those points where the draft Convention referred to accompanying documents, as had been done, for example, in article 2. The word "other" therefore appeared in paragraph (1) and in the *chapeau* and subparagraph (a) of paragraph (2) but had been placed inside square brackets since it had been felt that the context of the article might render its insertion unnecessary (see document A/CN.9/XXVIII/CRP.2/Add.4).

65. **Mr. BURMAN** (United States of America) questioned the need for a comma after "other".

66. **The CHAIRMAN**, speaking as representative of Singapore, said that his delegation felt that the inclusion of the word "other" was unnecessary. It wished to propose that the phrase "and any [other,] accompanying documents" be replaced by "and accompanying documents, if any,".

67. **Mr. HERRMANN** (Secretary of the Commission) said that it had long been the Commission's drafting practice to use "any ..." to signify "... if any". With regard to the comma appearing after "other", its omission would mean that the accompanying documents were in addition to an existing set of accompanying documents.

68. **Mr. EDWARDS** (Australia) said that, as he saw it, if the formulation "any accompanying documents" was used, the word "other" would be redundant. The present case was not comparable with article 2, since the text there said "demand accompanied by other documents". That was an entirely different usage of language. He therefore recommended that "[other,]" be deleted in the three instances where it appeared.

69. *It was so decided.*

70. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) said he took it that the Commission wished to adopt the drafting group's text as amended.

71. *It was so decided.*

Article 17

72. *The proposed change was adopted.*

The meeting was suspended at 4 p.m. and resumed at 4.10 p.m.

Article 18

73. *The proposed change was adopted.*

Article 19, paragraph (2) (e) (A/CN.9/XXVIII/CRP.2/Add.5)

74. *The proposed change was adopted.*

Article 19, paragraph (3)

75. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) said that, with a view to avoiding a protracted discussion of the text, he wished to propose that the opening phrase "In the circumstances set out in paragraph (1) of this article" be deleted and the rest be reworded as follows: "The principal/applicant is entitled to provisional court measures in accordance with article 20". If the reference to paragraph (1) was omitted, the difficulties encountered by the Commission regarding the standard of manifest and clear evidence would be circumvented, and the adoption of the simplified formulation "is entitled to provisional court measures" would resolve the problem of choosing between the verbs "obtain" and "seek", both of which had drawbacks.

76. **Mr. EDWARDS** (Australia) thought that the word "seek" was needed, since otherwise the text would imply an entitlement to the measures of injunctive relief themselves.

77. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) said that in some jurisdictions the word "seek" did not go as far as signifying a substantive right to apply to the court. The word "obtain" was also unsatisfactory, since it might create the impression that the applicant was virtually certain of being granted a provisional court order.

78. **Mr. BURMAN** (United States of America) said that, if the paragraph was amended as suggested, it would be unclear to the reader why it appeared in article 19 at all. As to the choice of verb, he felt that "seek" did not satisfactorily convey the idea of entitlement to initiate court action. If "obtain" was used, the problem it involved might be solved by qualifying it along the following lines: "a right to obtain depending upon proper evidence ...".

79. **Mr. BONELL** (Italy) agreed that the proposed new wording was open to misunderstanding. Perhaps paragraph (3) should be deleted altogether.

80. **Mr. FAYERS** (United Kingdom) said that his delegation could agree to the proposal made by the Chairman of the Committee of the Whole. However, some delegations required language that would first establish a ground for action to which the injunctive relief would be linked. It might therefore be better to retain the phrase "In the circumstances set out in paragraph (1) of this article".

81. **Ms. CZERWENKA** (Germany) said that, while she appreciated that the reason for the proposed deletion of the opening phrase of paragraph (3) was to avoid a reference to the standard of manifest and clear proof in paragraph (1), she nevertheless felt that some linkage between the two paragraphs was necessary. She would suggest that the opening phrase be retained but amended to read "In the circumstances set out in subparagraphs (a), (b) and (c) of paragraph (1) of this article". With regard to the choice of verb, her delegation could accept either "is entitled to a provisional court order" or "has a right to obtain a provisional court order".

82. **Mr. HERRMANN** (Secretary of the Commission) said that, if a reference was made in paragraph (3) to the specific circumstances indicated in subparagraphs (a), (b) and (c) of paragraph (1), that would create a more restrictive provision than if a reference was made to the "manifest and clear" evidential standard. The reason why it was now being proposed that a reference to paragraph (1) be omitted was the fact that the slightly lower standard of "high probability" was provided for in article 20, and it was important to avoid having two potentially conflicting rules. It would be almost impossible to describe precisely the conditions

(Mr. Herrmann, Secretary of the Commission)

under which there would be a right to obtain provisional relief without virtually duplicating what was said in article 20. It was thus preferable to omit a specific link between paragraphs (1) and (3) and to rely on the fact that they appeared in the same article and should therefore be read in conjunction.

83. **Mr. BURMAN** (United States of America) said that he would prefer to risk the possibility of an inappropriate standard of evidence being applied than the possibility of paragraph (3) being taken out of context and misinterpreted as relating not just to article 19.

84. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) wondered whether, in view of the lack of support for his proposal, the Commission might wish to consider the wording: "In the circumstances set out in paragraph (1) of this article, the principal/applicant has a right to obtain a provisional court order in accordance with article 20".

85. **Mr. BURMAN** (United States of America) said that he found that wording generally acceptable but felt that it should make a restrictive reference to subparagraphs (a), (b) and (c) of paragraph (1). That would imply that the standard of manifest and clear evidence would not be used. It might be helpful if an explanatory statement was included in the Commission's report.

86. **Mr. BONELL** (Italy) agreed with the view expressed by the representatives of Germany and the United States of America.

87. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) said he took it that the Commission wished to adopt the text he had just read out with the change suggested by the United States representative.

88. *It was so decided.*

Article 20, paragraph (1)

89. **Mr. AL-ZEID** (Observer for Kuwait) said that there was a discrepancy between the Arabic and English versions of paragraph (1); the phrase "instructing party" was inexactly rendered in the Arabic text. The Arabic version should be brought into line.

90. **Mr. FAYERS** (United Kingdom) said that his delegation wished to suggest that the words "issue a provisional order to the effect that" be removed from the last line of the *chapeau* and be inserted at the beginning of both subparagraph (a) and subparagraph (b). That would assist the flow of the text, particularly in view of the addition in subparagraph (a) of the phrase "including an order that the guarantor/issuer hold the amount of the undertaking".

91. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) said he took it that the Commission wished to adopt the text proposed by the drafting group with the change suggested by the representative of the United Kingdom.

92. *It was so decided.*

Article 20, paragraph (3)

93. **Mr. PELICHET** (Observer for the Hague Conference on Private International Law) said that, in the French version, instead of "*pour toute circonstance autre*", it would be preferable to say "*pour toute raison autre*" or "*dans toute autre circonstance*".

94. **Mr. SHIMIZU** (Japan) said that, in the contractual relationship between the principal and guarantor, the principal was often entitled to require the guarantor to refuse to effect payment to the beneficiary. He wished to know whether article 19 (3) would have the effect of invalidating that contractual right by specifying the scope of a right that might be wider than the circumstances set out in subparagraphs (a), (b) and (c) of article 19 (1), and whether article 20 (3) would be construed as preventing the principal from seeking provisional court measures pursuant to its local law in connection with its contract with the guarantor. If his interpretation was correct, he would like it to be reflected in the Commission's report. The point had been discussed in the Working Group (A/CN.9/388, para. 38).

95. **Mr. BURMAN** (United States of America) thought that that point should be dealt with later, at the time of discussion of the Commission's report.

96. **Mr. GAUTHIER** (Chairman of the Committee of the Whole), agreeing with the representative of the United States of America, said he took it that the Commission wished to adopt the proposed text subject to amendment of the French version as requested by the observer for the Hague Conference on Private International Law.

97. *It was so decided.*

Article 22

98. **Mr. GAUTHIER** (Chairman of the Committee of the Whole) recalled that, in its earlier discussion of article 1, the Commission had agreed to delete the phrase "or the habitual residence" in article 22. He took it that the text was adopted without those words.

99. *It was so decided.*

100. **Mr. PELICHET** (Observer for the Hague Conference on Private International Law) said that he regretted that decision.

101. *The text set out in the report of the drafting group (A/CN.9/XXVIII/CRP.2 and Add.1-5), as amended, was adopted.*

Decision of the Commission and recommendation to the General Assembly (A/CN.9/XXVIII/CRP.4)

102. **Mr. HERRMANN** (Secretary of the Commission), introducing the document, said that, following past practice, notably in the case of the Convention on International Bills of Exchange and International Promissory Notes, the Secretariat was proposing that the Commission submit its finalized text of the draft Convention to the General Assembly with the recommendation that the General Assembly itself should conclude and adopt a United Nations Convention on Independent Guarantees and Stand-by Letters of Credit. As a sub-organ of the General Assembly, the Commission could not bind the General Assembly to do so,

(Mr. Herrmann, Secretary of the Commission)

but he had been given to understand that such a recommendation would most probably receive a favourable response.

103. **Mr. BURMAN** (United States of America) said that his delegation welcomed the Secretariat's recommendation. The approach that it had adopted displayed an awareness of the budgetary constraints within the United Nations system and would be well received. Also, because of changes in the agenda of the Sixth Committee, there was a likelihood that there would be time for the recommendation, if made, to be processed at the forthcoming session of the General Assembly.

104. **Mr. GAUTHIER** (Chairman of the Committee of the Whole), observing that there were no objections, said he took it that the Commission wished to adopt the proposed decision.

105. *It was so decided.*

The discussion covered in the summary record ended at 4.50 p.m.